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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044526
Party	Defendant Sheppard, Laura N. Sheppard, Laura N. 1426 W. Strasburg RD West Chester, PA 19382
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Date	02/05/2006
Attachments	02_05_06_reply_brief.pdf ( 6 pages )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Live In Love, Inc. d/b/a/ Family Labels  
Petitioner

v.

Laura N. Sheppard d/b/a Family Doodles.  
Respondent

In the matter of  
Trademark Registration No. 2,908 ,824

For the mark: FAMILY DOODLES

Cancellation No. 92044526

**RESPONDENT’S REPLY BRIEF**  
**TO PETITIONER’S MOTION AND BRIEF IN SUPPORT OF MOTION TO EXTEND**  
**DISCOVERY AND TESTIMONY PERIODS**

Petitioner, in its fifty-six (56) page Motion and Brief in Support of its Motion to Extend Discovery and Testimony Periods (the “Motion”), characterizes Respondent’s concerns with a 120 day extension of discovery as “sexist” and “puzzling.” Petitioner further characterizes Respondent’s counsel as unresponsive and evasive and even suggests that Respondent’s counsel may believe that Petitioner counsel’s imminent maternity leave is a “concocted excuse.” Petitioner’s counsel goes to great lengths throughout the Motion to paint herself as diligent and responsive and places the need for an extension request squarely on Respondent’s counsel. While Respondent will not waste the Board’s time and resources with a point by point response to each of Petitioner’s counsel’s allegations (though the temptation is great), Respondent will simply point out that the Protective Order Petitioner’s counsel mentions throughout the Motion as a reason for necessitating the extension request could have been executed by Petitioner as early as August 7, 2005. Despite repeated requests for an editable version of the Protective Order containing Petitioner’s October 3, 2005 edits, Petitioner only provided such a document on January 31, 2006 - 3 days prior to the expiration of the Discovery and Testimony Periods and two days before Petitioner filed the subject Motion and almost **three full months after**

**Respondent's initial request for such a document on November 1, 2005.** In addition, Respondent's Motion would be wholly unnecessary if Petitioner's counsel had not waited until three days before the expiration of Discovery to seek an extension. A timely request by Petitioner's counsel would have allowed Respondent's counsel sufficient time to consult with Respondent on issues associated with the extension request. A timely request by Petitioner's counsel would have also allowed Respondent's counsel to attempt to secure approval for the subject extension. Respondent feels that a 120 day extension that apparently spans more than the duration of Petitioner's counsel's maternity leave is excessive and unnecessary. In deed, Respondent feels that no extension is necessary at all. Nevertheless, Respondent's counsel conferred with Respondent on the Morning of February 3, 2006. Respondent would be amenable to an extension of a shorter duration and suggests an extension equal to the length of Petitioner's counsel's leave. Respondent respectfully defers to the judgment of the Board as to the need for an extension at all and the length of any such extension.

### **STATEMENT OF FACTS**

Counsel for both parties have exchanged and responded to discovery requests and have exchanged drafts of a Protective Order. While Petitioner sent a draft Protective Order with its first set of discovery requests in June 2005 and Respondent did request an extension of time to respond to such discovery requests, this extension was due to family vacations and business issues of Respondent not Respondent's counsel as Petitioner's counsel contends on page 6 of the

Motion<sup>1</sup>. See July 6, 2005 correspondence at Petitioner's Exhibit B. In addition, Petitioner's counsel fails to mention that she requested and Respondent granted a reciprocal 30 day extension of time to respond to Respondent's discovery requests. See Exhibit D of Petitioner's Motion. These extensions resulted in the filing of a 60 day extension of time to extend Discovery and Testimony Periods.

Despite Petitioner squarely placing the need for an extension on Respondent's failure to finalize the draft Protective Order and despite Petitioner's characterization of Respondent as unresponsive, a modifiable Protective Order was only forwarded by Petitioner to Respondent on July 13, 2005 after being specifically requested by Respondent. The modifiable Protective Order allowed Respondent to include standard provisions not included in the Protective Order originally forwarded to Respondent in June of 2005. See Exhibit D of Petitioner's Motion. Respondent forwarded a revised Protective Order to Petitioner on August 7, 2005 with specific instructions to have the Protective Order partially executed. See Exhibit E of Petitioner's Motion. The Protective Order was apparently further revised by Petitioner and forwarded to Respondent along with discovery responses on October 3 2005 via first class mail. See Exhibit F of Petitioner's Motion. However, Respondent never received the further modified Protective Order or discovery responses as indicated in Respondent's email correspondence attached as Exhibit J to Petitioner's Motion. Petitioner inquired on the status of the Protective Order on October 31,

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<sup>1</sup> . Respondent merely mentions this as Petitioner's counsel, on page 6 of the Motion, attempts to juxtapose Respondent's request for a 30 day extension of time to respond to discovery with her own 120 day extension request and characterizes Respondent's issues and concerns with a 120 day extension as "sexist" and "puzzling" given that Petitioner, as a matter of professional courtesy, granted Respondent's request.

2005 via email and Respondent responded that same day via email. See Exhibit J to Petitioner's Motion. On November 1, 2005, Respondent specifically requested a modifiable version of the Protective Order incorporating Petitioner's October 3, 2005 revisions so that Respondent could review Petitioner's suggested edits and easily respond via redline. See Exhibit J to Petitioner's Motion. Petitioner forwarded such a document on January 31, 2006 *almost three months after Respondent's initial request*. See Petitioner's January 31, 2006 correspondence attached as Exhibit N to Petitioner's Motion.

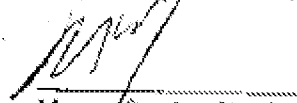
### **ARGUMENT**

Petitioner's characterization of Respondent as unresponsive and Petitioner's characterization of the need for the subject extension due to Respondent's failure to execute the Protective Order is disingenuous. Given that Petitioner only forwarded a modifiable Protective Order containing Petitioner's October 3, 2005 edits to Respondent on January 31, 2006 and only contacted Respondent on January 31, 2006 (days before the expiration of the discover period) to seek an extension, Petitioner's claims of diligence should be carefully scrutinized. Given the foregoing, Respondent asserts that Petitioner has failed to show good cause as to why a 120 day extension of the Discovery and Testimony Periods is necessary. While Petitioner believes that Respondent's concerns with a 120 day extension are puzzling and sexist, Respondent maintains that such an extension is excessive and unnecessary. Further, Respondent fails to understand the need to extend discovery for a full month after Petitioner's counsel has returned from her leave when other attorneys representing Petitioner are capable of handling this proceeding and have been copied on all of Petitioner's correspondence.

**CONCLUSION**

Respondent asserts that Petitioner has failed to show good cause as to why a 120 day extension of the Discovery and Testimony Periods is necessary. Respondent further asserts that a 120 day extension of the Discovery and Testimony Periods is excessive and unnecessary. While Respondent has legitimate concerns with the need for any extension, Respondent would agree to an extension of a shorter duration and suggests an extension equal to the length of Petitioner's counsel's leave. Notwithstanding the foregoing, Respondent respectfully defers to the judgment of the Board as to the need for an extension and the length of any extension should the Board feel an extension is warranted.

Respectfully Submitted,



Marcus Stephen Harris  
Attorney for Respondent

February 5, 2006

February 5, 2006

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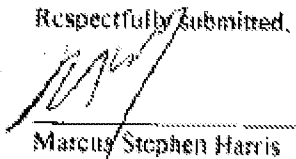
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Respondent's Reply Brief To Petitioner's Motion And Brief in Support of Motion to Extend Discovery And Testimony Periods has been served upon the following party as noted below via email to: [MMLO@raderfishman.com](mailto:MMLO@raderfishman.com) and via United States Postal Service first class mail with postage fully pre-paid on February 5, 2006.

Mary Margaret L. O'Donnell  
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Bloomfield Hills, Michigan 48304

Respectfully Submitted,



Marcus Stephen Harris  
Attorney for Respondent

February 5, 2006